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NIXON & VANDERHYE, PC  
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**OFFICE OF PETITIONS**

In re Application of Vidalinc	:	
Patent No. 7,682,505	:	
Issue Date: March 23, 2010	:	DECISION ON APPLICATION
Application No. 10/590,362	:	FOR PATENT TERM ADJUSTMENT
Filed: August 23, 2006	:	
Attorney Docket No. 10/590,362	:	

This is in response to the "Application for Patent Term Adjustment Pursuant to 37 CFR § 1.705(b)" filed February 1, 2010, requesting the initial determination of patent term adjustment be corrected from three hundred seventy (370) days to three hundred ninety-eight (398) days. The petition requests the correction solely on the basis that the Office will take in excess of three years to issue this patent.

The petition under 37 C.F.R. § 1.705(b) is **dismissed**.

The Office mailed a Determination of Patent Term Adjustment under 35 U.S.C. § 154(b) advising Patentee of a patent term adjustment to date of 370 days on January 15, 2009,

The instant petition was filed February 1, 2010. The petition contends the application is entitled to 28 additional days of patent term adjustment based on the failure of the Office to issue the patent within three years of the filing date of the application.

The Office issued the application as a patent on March 23, 2010. The patent indicates the patent term adjustment is 396 days which includes a 28-day increase under 37 C.F.R. § 1.702(b). The patent term adjustment also includes a 2-day reduction as a result of the issue fee being filed three months and two days after the Office mailed the Notice of Allowance.

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. As a result, a request for reconsideration of Patent Term Adjustment based on time earned pursuant to 37 C.F.R. § 1.702(b) should normally be made by the filing of a petition under 37 C.F.R. § 1.705(d) within two months after the issuance of the patent. However, in view of the issuance of the instant patent on March 23, 2010, the Office will not dismiss the instant petition as premature.

The petition argues the patent term adjustment should include a 28-day increase as a result of the Office's failure to issue the patent within three years of the filing date of the application. The patent term adjustment on the patent includes a 28-day increase adjustment due to the Office's failure to issue the patent within three years of the filing date of the application. Therefore, the arguments in the petition concerning the 28-day period are moot.

Although the Office agrees a 28-day increase to the patent term adjustment is warranted for delay in the issuance of the patent, the Office does not agree the patent term adjustment should be 398 days.

The Office entered a 2-day reduction in patent term adjustment based on the issue fee being filed 3 months and 2 days after the Office mailed the Notice of Allowance. In view of the 2-day reduction, the patent term adjustment is 396 days.

Submission of the \$200.00 fee set forth in 37 C.F.R. § 1.18(e) is acknowledged. No additional fee is required.

As previously discussed, the patent term adjustment remains 396 days.

Telephone inquiries specific to this decision should be directed to Senior Petitions Attorney Steven Brantley at (571) 272-3203.



Anthony Knight  
Director  
Office of Petitions